

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANK DE JESUS,

Plaintiff,

- against -

GREYHOUND LINES, INC.,

Defendants.
----- x

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: September 9, 2011

10 Civ. 04065 (PAC) (RLE)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

Frank De Jesus ("De Jesus") instituted this action, pro se, against Greyhound Lines, Inc. ("Greyhound"), pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. ("Title VII"), New York State Executive Law §§ 290-97, and Title 8 of the New York City Administrative Code, on April 7, 2010. On May 20, 2010, this Court referred the case to Magistrate Judge Ellis for all pretrial matters and dispositive motions.

On October 5, 2010, Magistrate Judge Ellis, having determined that Greyhound had not been served with a copy of the summons and complaint, ordered De Jesus to do so by October 26, 2010. (Report and Recommendation ("R&R") 1.) Magistrate Judge Ellis cautioned De Jesus that his failure to effect service, or show good cause why service has not been effected by October 26, 2010, would result in a recommendation that the complaint be dismissed, pursuant to Federal Rules of Civil Procedure 4(m). On November 19, 2010, when Magistrate Judge Ellis noted that De Jesus had not complied with his October 5, 2010 order, he recommended dismissal with prejudice. (Id.) Written objections were due in 14 days but none were filed.

DISCUSSION

In reviewing a report and recommendation, a Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record.” Feehan v. Feehan, No. 09 Civ. 7016 (DAB), 2011 WL 497776 at *1 (S.D.N.Y. Feb. 10, 2011).

Fed. R. Civ. P. 4(m) provides that “[i]f a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

Magistrate Judge Ellis found that De Jesus had failed to effect service or show good cause for failing to comply with the October 5, 2010 Order, and accordingly his complaint should be dismissed without prejudice. This Court agrees.

CONCLUSION

There is no clear error in Magistrate Judge Ellis's analysis, and the Court adopts Magistrate Judge Ellis's R&R in its entirety. De Jesus's complaint is, therefore, dismissed without prejudice. The Clerk of Court is directed to enter judgment and close this case. Pursuant to 28 U.S.C § 1915(a), this Court finds that any appeal from this order would not be taken in good faith.

Dated: New York, New York
September 9, 2011

SO ORDERED

A handwritten signature in black ink, appearing to read "Paul A. Crotty", written over a horizontal line.

PAUL A. CROTTY
United States District Judge

Copies Mailed To:

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